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Alan Rex Bauer

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Progressive Casualty/BHGL

P.O. Box 10395

Chicago, IL 60610

EXAMINER

WOODS, TERESA S

ART UNIT

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,076	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> TERESA WOODS	<b>Art Unit</b> 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on October 12, 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 181-262 is/are pending in the application.
- 4a) Of the above claim(s) 181-199, 201-222, and 240-260 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 200, 223-239, 261, and 262 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on January 23, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20100701 and 20100820</u>                                     | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

1. This communication is in response to the amendment filed 10/12/10.
2. Claims 181-262 remain pending, with claims 181-199, 201-222, and 240-260 having been withdrawn from further consideration, and with claims 200, 223-239, 261, and 262 having been currently examined.

### ***Priority***

1. For the purposes of Examination, claims 200, 223-239 and 261 have an effective filing date of 01-23-2004. The Double Patenting is being upheld. In Application No. 09/571,650, filed 05-15-2000, the method and system claims are narrow in description and comprise of; a web site, use of internet, monitoring vehicle operating characteristics in unit of risk during a period of time and storing the operating characteristics in unit of risk for the purpose of deciding insurance costs. The broad claims of this CIP case simply monitor and search the stored level of risk among a network of vehicle operators, of which is included in both the Burge and Tobey references.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 200, 223-225 and 261 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12 and 25 of U.S. Patent No. 5,797,134. Although the conflicting claims are not identical, they are not patentably distinct from each other because the tracked *“vehicle operating states and driver actions”*, *“trigger event”* has the same meaning and usage as *“track vehicle data and levels of risk”*.
2. Claims 200, 223-225 and 261 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5 and 6 of U.S. Patent No. 6,064,970. Although the conflicting claims are not identical, they are not patentably distinct from each other because the tracked *“operating state of a vehicle”*, *“preselected relationship to the safety standards”* has the same meaning and usage as *“track vehicle data and levels of risk”*.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 223-239, 261 and 262 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tobey (US 6,714,894 B1) in view of Burge (US 2002/0111725 A1).

6. **Claim 223:**

Tobey, as shown, discloses the following limitations:

- *a computer system that serves an interface module that monitors a vehicle operating characteristic or a vehicle operator action of one or more vehicle or operators in which the computer system is configured to establish relationships between the vehicle operating characteristic or the vehicle operator action and levels of risk that are involved in an operation of one or more vehicles (See at least column 4, line 63 to column 5, line 11). Here, the group of drivers serves as an operation of one or more vehicles.*
- *a database that stores relationship data representing associations between vehicle data associated with a plurality of vehicles or operators and an operator or insurer monitored vehicle data, where the relationship data quantifies, for one or more vehicles or operators, relationships between relative levels of risk in the operation of the one or more vehicles and the monitored vehicle data (See at*

least Abstract, Fig. 3, Fig. 7I, Fig. 7P, Fig. 7T, column 4, line 63 to column 5, line 11, column 19, lines 33-35).

However, Burge discloses a similar apparatus provided below:

- *an interface module that provides functionality to search the database for a risk assessment of the vehicle data, where the interface module is responsive to a request to quantify driver behavior by processing the monitored vehicle data to render a driver safety score, where the driver safety score establishes a level of risk associated with insuring a selected operator or a vehicle* (See at least Fig. 1, Abstract, ¶0051, ¶0172). In the third citation, the on-board sensors serve as interface modules.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the vehicle monitoring interface module of Burge to comprehensively evaluate the risk and safety of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

**7. Claim 224:**

Tobey, as shown, discloses the following limitations:

- *a computer system that serves an interface module that is configured to establish relationships between data that represents a vehicle operating characteristic and a vehicle operator action of one or more users and data that represents levels of risk involved in an operation of one or more vehicles* (See at least column 4, line 63 to column 5, line 11). Here, the group of drivers serves as an operation of one or more vehicles.

However, Burge discloses a similar apparatus provided below:

- *a database that stores relationship data representing associations between vehicle data associated with a plurality of vehicles or operators and an operator or insurer monitored vehicle data, where the relationship data quantifies, for one or more vehicles or operators, relationships between relative levels of risk in the operation of the one or more vehicles and the monitored vehicle data (See at least ¶0146, ¶0147).*
- *an interface module that provides functionality to search the database for a risk assessment of the vehicle data, where the interface module is responsive to a request to quantify driver behavior by processing the monitored vehicle data to render a driver safety score, where the driver safety score establishes a level of risk associated with insuring a selected user or vehicle (See at least Fig. 1, Abstract, ¶0051, ¶0146, ¶0172). In the fourth citation, the on-board sensors serve as interface modules.*

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the vehicle monitoring interface module and database of Burge to comprehensively evaluate the risk and safety of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

**8. Claim 225:**

Tobey, as shown, discloses the following limitations:

- *a computer system that serves an interface module that is configured to establish relationships between data that represents a vehicle operating characteristic or a vehicle operator action and levels of risk that are involved in an operation of one or more vehicles (See at least column 4, line 63 to column 5, line 11). Here, the group of drivers serves as an operation of one or more vehicles.*



However, Burge discloses a similar apparatus provided below:

- *a database that stores relationship data representing associations between vehicle data associated with a plurality of vehicles or operators and monitored vehicle data, where the relationship data quantifies, for one or more vehicles or operators, relationships between relative levels of risk in the operation of the one or more vehicles and the monitored vehicle data* (See at least ¶0146, ¶0147, ¶0148). Here, managed fleet of vehicles serve as a plurality of vehicles.
- *an interface module that provides functionality to search the database for a risk assessment of vehicle data, where the interface module is responsive to a request to quantify driver behavior by processing the monitored vehicle data to generate driver safety data* (See at least Fig. 1, Abstract, ¶0051, ¶0172). In the third citation, the on-board sensors serve as interface modules.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the vehicle monitoring interface module and database of Burge to comprehensively evaluate the risk and safety of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

9. **Claim 226:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety data comprises a driver safety score* (See at least Fig. 7J, column 16, lines 59-65).

10. **Claim 227:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score is processed by the computer system to generate actuarial information* (See at least column 4, lines 63 to column 5, line 35). Here, the information accessed and manipulated by administrators serves as generating actuarial information.

11. **Claim 228:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score is processed by the computer system to generate or verify insurance information* (See at least Fig. 3, column 9, line 58 to column 10, line 15). Here, raw data, administrative agencies and third party vendors serve as generating insurance information.

12. **Claim 229:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score comprises a weighted sum of one or more operating factors* (See at least column 5, lines 23-35). Here, the detailed summarized reports of various driver information serves as a weighted sum of

one or more operating factors.

13. **Claim 230:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score is derived from the monitored data collected from the vehicle and other data independent from the monitored data* (See at least Fig. 7I, Fig. 7J, column 16, lines 48-65).

14. **Claim 231:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score comprises a dynamic score that reflects changes in a driving behavior* (See at least Fig. 7I, Fig. 7J, column 16, lines 48-65).

15. **Claim 232:**

Tobey and Burge disclose the limitation mentioned above. However, Burge further discloses *where the driver safety score comprises a rating factor that quantifies an insurable risk* (See at least Abstract, ¶0231; Claim 16). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the safety

scores of Burge to comprehensively evaluate the risk and safety of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

16. **Claim 233:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score comprises a single numerical value* (See at least column 8, lines 2-10). Here, floating point coprocessor is used to calculate single numerical values.

17. **Claim 234:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety score comprises an expression representing a level of risk associated with a particular driver* (See at least Fig. 5A, column 14, line 52 to column 15, lines 8). In figure 5A, driver's score and represented risk levels are shown.

18. **Claim 235:**

Tobey and Burge disclose the limitation mentioned above. However, Burge further discloses *further comprising a computer storage media accessible to the computer system that causes a processor to modify terms of an insurance policy* (See at least ¶0002, ¶0231 Claim 23). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the modified insurance policy features of Burge to comprehensively factor in the risk and safety of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

19. **Claim 236:**

Tobey and Burge disclose the limitation mentioned above. However, Burge further discloses *further comprising a computer storage media accessible to the computer system that causes a processor to determine an insurance premium* (See at least ¶0002, ¶0059, ¶0231 Claim 23). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the insurance premium adjustment features of Burge to comprehensively factor in the risk and safety of an operator's driving when processing car insurance to have improved the

efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

20. **Claim 237:**

Tobey and Burge disclose the limitation mentioned above. However, Burge further discloses *further comprising a computer storage media accessible to the computer system that causes a processor to adjust an insurance premium* (See at least ¶0002, ¶0059, ¶0231; Claim 21). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the insurance premium adjustment features of Burge to comprehensively factor in the risk and safety of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

21. **Claim 238:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the network computer system comprises a back-end*

*processor that is remote from the vehicle that generates the data* (See at least column 8, lines 2-10). Here, floating point coprocessor serves as a back-end processor that is remote from the vehicle that generates the data.

**22. Claim 239:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the relative levels of risk are based on comparisons of a user's vehicle operating habits to vehicle operating habits of others* (See at least Fig. 5A, Fig. 5B, column 4, line 63 to column 5, line 6). Here, a group of drivers serve as comparing the operating habits of others.

**23. Claim 261:**

Tobey, as shown, discloses the following limitations:

- *an input device configured to interface and communicate with a vehicle bus that transfers information to and from in-vehicle devices* (See at least column 8, lines 11-27). Here, the devices attached to a bus serve as an input device configured to interface and communicate with a vehicle bus.
- *a database that stores relationship data indicating the relationships established between a plurality of vehicles or operators and monitored vehicle data, where the relationship data identifies, for one or more selected vehicles or operators, relationships between relative levels of risk and the monitored vehicle data* (See at least Fig. 5A, Fig. 5B, column 4, line 63 to column 5, line 6, column 19, lines 32-61).

- *an interface module that provides functionality to search the database for a risk assessment of vehicle data, where the interface module is responsive to a request by using the relationship data and the monitored vehicle data to identify risk associated with selected vehicles or operators (See at least Fig. 5A, Fig. 5B, column 4, line 63 to column 5, line 6, column 8, lines 11-27, column 19, lines 32-61).*

However, Burge discloses a similar apparatus provided below:

- *a first processor that copies distance-based data repetitively from the vehicle bus through the input device (See at least ¶0150, ¶0231; Claim10).*
- *a memory that retains the distance-based data copied from the vehicle bus at a predetermined interval, the memory retains the content when not connected to a vehicle power source (See at least Fig. 1, ¶0172).*
- *a second processor that assigns a level of insurable risk to a vehicle or an operator based at least in part on the distance-based data written to the memory (See at least Fig. 1, ¶0144, ¶0145). Here, the data delivery and processing system serves as a second processor.*
- *a network server system that provides an interface having the functionality for establishing relationships between users that track vehicle data and levels of risk in a usage based insurance system (See at least Fig. 1, ¶0144, ¶0145).*

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Tobey so as to have include the processors and data storage of Burge to comprehensively attribute previous risk and safety factors of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.



24. **Claim 262:**

Tobey and Burge disclose the limitation mentioned above. However, Tobey further discloses *where the driver safety data comprises a designation representing a level of risk associated with a particular driver* (See at least Fig. column 5, lines 1-6).

25. Claim 200 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burge (US 2002/0111725 A1) in view of Tobey (US 6,714,894 B1).

26. **Claim 200:**

Burge, as shown, discloses the following limitations:

- *a network server system that provides an interface having the functionality for establishing relationships between users that track vehicle data and levels of risk in a usage based insurance system* (See at least Fig. 1, Fig. 3, ¶¶113, ¶¶0014, ¶¶0231; Claim 16, 19, 20 & 21).
- *an interface module that provides functionality to search the database for a risk assessment of vehicle data, where the interface module is responsive to a request from a user by using the relationship data and the monitored vehicle data to identify the level of risk* (See at least Fig. 1, Abstract, ¶¶0051, ¶¶0172). In the third citation, the on-board sensors serve as interface modules.

Burge does not explicitly disclose data storage for a group of users. However, Tobey discloses a similar apparatus provided below:

- *a database that stores relationship data indicating the relationships established between vehicle data relating to one or more of users and an insured's monitored*

*vehicle data, where the relationship data identifies, for an insured or other selected users, relationships between relative levels of risk and the monitored vehicle data* (See at least Abstract, Fig. 3, Fig. 7I, Fig. 7P, Fig. 7T, column 4, line 63 to column 5, line 11, column 19, lines 33-35).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified Burge's apparatus and method so as to have include the data storage for a group of users of Tobey to comprehensively attribute previous risk and safety factors of an operator's driving when processing car insurance to have improved the efficiency of the system, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **Teresa Woods** whose telephone number is **571.270.5509**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the

examiner by telephone are unsuccessful, the Examiner's supervisor, **Jerry O'Connor** can be reached at **571.272.6787**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

/T. W./  
Examiner, Art Unit 3686  
12/16/10

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686